Leow Fook Keong (L) v Pendaftar Besar Bagi Kelahiran dan Kematian, Jabatan Pendaftaran Negara, Malaysia & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(f)-1–01 OF 2019(W)
TENGKU MAIMUN CHIEF JUSTICE, ZAWAWI SALLEH AND MARY LIM FCJJ
18 NOVEMBER 2021

Administrative Law — Exercise of administrative powers — Exercise of powers under ss 27 and 28 of the Births and Deaths Registration Act 1957 — Appellant filed application for order that registrar-general of births and deaths be directed to register appellant's name as biological father of a child — High Court allowed appellant's application — Court of Appeal set aside High Court's decision — Whether National Registration Department was under statutory duty to record particulars of biological father of illegitimate child and/or to correct/amend/update such records, when evidence and undisputed facts were available — Births and Deaths Registration Act 1957 ss 7, 13, 13A, 27 & 28

The appellant had successfully obtained an order from the High Court ('the HC') declaring that he was the biological father of a child born on 16 July 2015 ('the child'). The order was made based on DNA tests conducted on the appellant, the second respondent and the child. The second respondent in the present appeal was the mother of the child whereas the first respondent was the registrar-general of births and deaths. The appellant then filed an application at the HC seeking for the orders that: (a) the first respondent be directed to register the name of the appellant as the biological father of the child in the birth certificate of the child; and (b) the first respondent be directed to register the appellant's surname to the child. The HC allowed the application, but the HC's decision was set aside by the Court of Appeal ('the COA'). The COA held that: (i) s 28 of the Births and Deaths Registration Act 1957 ('Act 299') did not supersede s 13 of Act 299; and (ii) the HC's decision was 'in conflict' with 'public policy', 'culture of the people' and 'religious values'. In the present appeal, the issue to be determined was whether the National Registration Department was under a statutory duty to record the particulars of the biological father of an illegitimate child and/or to correct/amend/update such records, when evidence and undisputed facts were available ('the question of law').

Held, allowing the appeal, and setting aside the COA's decision with no order as to costs:

(1) The registration of the birth of the child was in accordance with the terms of ss 7, 13 and 13A of Act 299. At the material time of registration, there was no joint request and agreement from the appellant to have his name entered as the father of the child. Even if the appellant said that he was agreeable had he been asked, it would still not meet the requirements of s 13 of Act 299 because the second respondent was not agreeable to making a joint request. Therefore, in the present appeal, the reasons for the lack of a joint request and agreement were really irrelevant. However, the court found that, given the circumstances in this appeal, the entry in the register, though rightly recorded as 'maklumat tidak diperolehi', could no longer held true (see para 52).

(2) Following the DNA results and more particularly, the order of court declaring the appellant as the biological father of the child, it could not be now said that the information pertaining to the father of the child was or remained, unavailable or 'tidak diperolehi'. Quite rightly and in keeping with the duties and obligations of maintaining a reliable public record of births, the registrar-general could not refuse the new information. The object and scheme of Act 299 together with the relevant provisions, namely s 27 read with s 28 of Act 299 ought to have compelled the registrar-general to carry out his statutory duties of correcting and updating of records. Correcting the records would not render the information when first recorded at the time of birth of the child as inaccurate. Neither could it be suggested to run contrary to the interests or rights of the second respondent as mother of the child as accorded under s 13 of Act 299. That right remained intact as under s 27(3), while 'any error of fact or substance in any register may be corrected by entry', this was 'without any alteration of the original entry'. Hence, the issue of interference with the mother's rights and the matter of whether she was under an obligation to provide the name or details of the father of the child did not arise. The court therefore answered the question of law posed in the affirmative (see paras 53–54, 65 & 72).

[Bahasa Malaysia summary

Perayu telah berjaya mendapatkan perintah daripada Mahkamah Tinggi ('MT') yang mengisytiharkan bahawa dia ialah bapa kandung kepada seorang kanak-kanak yang dilahirkan pada 16 Julai 2015 ('kanak-kanak tersebut'). Perintah tersebut dibuat berdasarkan ujian DNA yang dijalankan ke atas perayu, responden kedua dan kanak-kanak tersebut. Responden kedua dalam rayuan ini ialah ibu kepada kanak-kanak tersebut manakala responden pertama ialah ketua pendaftar kelahiran dan kematian. Perayu kemudiannya memfailkan permohonan di MT untuk mendapatkan perintah agar: (a) responden pertama diarahkan untuk mendaftarkan nama perayu sebagai bapa kandung kanak-kanak tersebut dalam sijil kelahiran kanak-kanak tersebut; dan (b) responden pertama diarahkan untuk mendaftarkan nama

keluarga perayu kepada kanak-kanak tersebut. Mahkamah Tinggi membenarkan permohonan tersebut, tetapi keputusan MT telah diketepikan oleh Mahkamah Rayuan ('MR'). Mahkamah Rayuan berpendapat bahawa: (i) s 28 Akta Pendaftaran Kelahiran dan Kematian 1957 ('Akta 299') tidak menggantikan s 13 Akta 299; dan (ii) keputusan MT adalah 'bercanggah' dengan 'dasar awam', 'budaya masyarakat' dan 'nilai keagamaan'. Dalam rayuan ini, isu yang perlu diputuskan ialah sama ada Jabatan Pendaftaran Negara mempunyai kewajipan berkanun untuk merekodkan butir-butir bapa kandung anak tak sah taraf dan/atau membetulkan/meminda/mengemaskini rekod tersebut, apabila terdapat keterangan dan fakta yang tidak dipertikaikan ('persoalan undang-undang').

Diputuskan, membenarkan rayuan dan mengenepikan keputusan MR tanpa perintah berkenaan kos:

(1) Pendaftaran kelahiran kanak-kanak tersebut telah dibuat dengan betul mengikut peruntukan ss 7, 13 dan 13A Akta 299. Pada masa pendaftaran, tiada permohonan dan persetujuan bersama daripada perayu untuk memasukkan namanya sebagai bapa kepada kanak-kanak tersebut. Walaupun perayu mengatakan bahawa dia akan bersetuju jika dia diminta untuk berbuat demikian, ia masih tidak akan memenuhi keperluan s 13 Akta 299 kerana responden kedua tidak bersetuju untuk membuat permohonan bersama. Oleh itu, dalam rayuan ini, alasan-alasan berkenaan dengan ketiadaan permohonan dan persetujuan bersama adalah tidak relevan langsung. Walaubagaimanapun, mahkamah mendapati, berdasarkan keadaan dalam rayuan ini, catatan dalam daftar tersebut, walaupun direkodkan dengan betul sebagai 'maklumat tidak diperolehi', tidak lagi boleh dipertahankan (lihat perenggan 52).

(2) Berikutan keputusan ujian DNA dan lebih khusus lagi, perintah mahkamah yang mengisytiharkan perayu sebagai bapa kandung kanak-kanak tersebut, kini tidak boleh dikatakan bahawa maklumat yang berkaitan dengan bapa kanak-kanak tersebut adalah atau kekal, tidak tersedia atau 'tidak diperolehi'. Agak betul dan selaras dengan tugas dan kewajipan mengekalkan rekod kelahiran awam yang boleh dipercayai, ketua pendaftar tidak boleh menolak maklumat baharu tersebut. Objektif dan skim Akta 299 berserta peruntukan yang berkaitan, iaitu s 27 dibaca dengan s 28 Akta 299 sepatutnya memaksa ketua pendaftar untuk menjalankan tugas berkanunnya untuk membetulkan dan mengemas kini rekod tersebut. Membetulkan rekod tersebut tidak akan menjadikan maklumat yang direkodkan pada kali pertama semasa kelahiran kanak-kanak tersebut sebagai tidak tepat. Ia juga tidak boleh dikatakan sebagai bertentangan dengan kepentingan atau hak responden kedua sebagai ibu kepada kanak-kanak tersebut seperti yang diberikan di bawah s 13 Akta 299. Hak tersebut kekal kerana

di bawah s 27(3), walaupun 'apa-apa kesilapan fakta atau bahan dalam mana-mana daftar boleh diperbetulkan melalui catatan', ini adalah 'tanpa apa-apa pengubahan kepada catatan asal'. Oleh itu, isu campur tangan terhadap hak ibu dan persoalan sama ada dia mempunyai kewajipan untuk memberikan nama atau butiran bapa kanak-kanak tersebut tidak timbul. Oleh itu mahkamah menjawab persoalan undang-undang yang dikemukakan secara afirmatif (lihat perenggan 53–54, 65 & 72).]

Cases referred to

AFE v Registrar of Births, Deaths and Marriages [2011] NSWADT 201 (refd)

In the matter of s 60(8) of the Civil Registration Act 2004 and in the matter of MR and DR (minors suing by their father and next friend OR), OR and CR, Applicants v An tArd Chláraitheoir, Ireland and The Attorney General, Respondents and LL, Notice Party, and The Equality Authority and The Irish Human Rights Commission, Amici Curiae [2014] IESC 60, SC (refd)

Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener) [2020] 2 MLJ 277; [2020] 4 CLJ 731, FC (refd)

Mayo v Mayo [1949] P 172; [1948] 2 All ER 869; [1949] LJR 48; 92 Sol Jo 676 (refd)

Nabors Drilling (Labuan) Corp v Lembaga Perkhidmatan Kewangan Labuan [2020] 12 MLJ 54, FC (refd)

Perring v Perring and Simpson [1949] 2 All ER 334 (refd)

Sean O' Casey Patterson v Chan Hoong Poh & Ors [2011] 4 MLJ 137; [2011] 3 CLJ 722, FC (refd)

Teoh Hock Soon v Chan Peng Yee [2012] MLJU 71, HC (refd)

Legislation referred to

Administrative Decisions Tribunal Act 1997 [AU]

Adoption Act 1952

Births and Deaths Registration Act 1953 [UK] s 10

Births and Deaths Registration Act 1957 ss 4, 5, 7, 7(3), 8, 11, 12, 13, 13A, 15(3), 17, 27, 27(1), (2), (3), (4), (5), 28, 31, 32, 33, 33(1), 34, 39

Births and Deaths Registration Rules 1958 (repealed by Births and Deaths Registration Rules 2019)

Births and Deaths Registration Rules 2019 First Schedule

Births, Deaths and Marriages Registration Act 1995 [AU] s 18

Care of Children Act 2004 [NZ] s 17(2)

Children Act 1975 [UK]

Children's Act 38 of 2005 [SA] ss 19, 21

Civil Code of the Philippines [PH] article 176

Courts of Judicature Act 1964 s 14

Family Law Reform Act 1969 [UK]

Family Law Reform Act 1987 [UK]

Guardianship of Infants Act 1961

Registration of Adoptions Act 1952
Registration of Births and Deaths Ordinance (Cap 10 (1958 Ed))
Registration of Births and Deaths Ordinance (Sabah Cap 123)
Registration of Births, Deaths and Marriages Act 1973 [AU] (repealed by Births, Deaths and Marriages Registration Act 1995)

Appeal from: Civil Appeals Nos W-01(A)-294–08 of 2017 and W-01(A)-292–08 of 2017 (Court of Appeal, Putrajaya)

Balwant Singh Sidhu (Kelvinder Singh Sidhu with him) (Balwant Singh Sidhu & Co) for the appellant.
Suzana bt Atan (Narkunavathy Sundareson and Kogilambigai Muthusamy with her) (Attorney General's Chambers) for the first respondent.
Ng Kian Nam (Ng Kian Nam & Partners) for the second respondent.

Mary Lim FCJ (delivering judgment of the court):

[1] This case brings to the fore, once again, the role and duty of the registrar-general of births and deaths ('the registrar-general'), the first respondent in this appeal, and the status of records of new lives and the passing of such lives in the register and indices maintained by the registrar-general. As we see it, the register is a public record, accessible on terms, while the registrar-general's role is necessarily facilitative, objectively exercised. This case and its peculiar facts illustrate that understanding. Had that role and duty been properly appreciated from the outset, a substantial amount of misconception and angst would have been avoided.

[2] The single question before this court is:

Whether the National Registration Department is under a statutory duty to record the particulars of the natural father of an illegitimate child and/or to correct/amend/update such records, when evidence and undisputed facts are available.

[3] We were unanimous in answering this poser in the affirmative and our reasons are as follows.

RELEVANT BACKGROUND FACTS

[4] On 25 August 2016, the appellant successfully procured an order of court vide Originating Summons No 24F-172–10 of 2015 ('OS') declaring him as the biological father of a child born on 16 July 2015 at Sunway Medical Centre, Selangor Darul Ehsan ('the child'). That declaratory order was granted after the High Court in the OS had earlier ordered on 25 February 2016 that

a deoxyribonucleic acid test or more commonly known as a 'DNA test' be conducted on the second respondent and the child. The relevant persons, namely the appellant, the second respondent and the child, provided the necessary blood samples for that test. The report dated 13 April 2016 prepared by the chemistry department which carried out the DNA test revealed that the appellant is the biological father of the child. Together with the declaratory order, the appellant obtained regular access to the child which he continues to have to this date. There were no appeals against these orders.

[5] Now, the basis for those orders also forms a substantial part of the factual substratum of the case in this appeal. Those facts which are largely undisputed are as explained in the affidavits exchanged between the appellant and the second respondent.

[6] According to the appellant, the child is from a four-year live-in relationship which he had with the second respondent. The second respondent who is the mother of the child had registered the birth of the child without his knowledge leading to the particulars of the father of the child being recorded as 'maklumat tidak diperolehi' or information unavailable. The appellant claimed that had he known of the registration, he would have attended the same and have his details so recorded.

[7] All this occurred because the appellant and the second respondent were not married to each other, be it then or even now. In fact, the second respondent was married to someone else with whom she has another child at the time of the birth of the child. The second respondent has since reunited with the estranged husband and she now lives with him and the two children.

[8] In short, the child is illegitimate.

[9] Although the appellant had sought in the OS a prayer that the National Registration Department be directed to register the appellant's surname to the child, the appellant withdrew that particular prayer, informing the High Court that he would be filing fresh proceedings for that purpose and citing the National Registration Department as one of the parties. And, that was precisely what the appellant did. He filed the present proceedings, citing the registrar-general of births and deaths at the National Registration Department, Malaysia as the first respondent, and the mother of the child as the second respondent.

[10] In essence, the appellant claimed that the second respondent had failed to provide the relevant information pertaining to the father of the child at the material time of registration of the birth of the child despite being in possession of such information. As regards the first respondent, the appellant's case is

simply this — that the register which contains incomplete particulars on the father of the child should be updated to reflect the declaratory order granted by the High Court in the OS, that he is the biological or natural father of the child.

[11] This is evident from the principal orders sought at the High Court:

1. Pendaftar Kelahiran dan Kematian, Jabatan Pendaftaran Malaysia, diperintahkan untuk mendaftarkan nama plaintif sebagai bapa kandung kanak-kanak yang dikenali sebagai KANAK-KANAK L, yang dilahirkan kepada defendan kedua pada 16 Julai 2015 di Sunway Medical Centre, Subang Jaya, Petaling Jaya, Selangor DE di dalam Sijil Kelahiran kanak-kanak tersebut;
2. Pendaftar Kelahiran dan Kematian, Jabatan Pendaftaran Malaysia, juga diperintahkan untuk mendaftarkan nama keluarga (surname) anak itu, seperti nama keluarga plaintif; dan
3. Relif selanjutnya atau lain-lain relief yang difikirkan adil dan suaimanfaat oleh mahkamah yang mulia ini.

[12] The High Court granted both orders in the application albeit opposed by the respondents. On appeal, the orders of the High Court were set aside. Only the first of the two orders are pursued in this appeal before us. The appellant is not pursuing an order that the child bears his surname.

REASONINGS OF THE HIGH COURT AND COURT OF APPEAL

[13] The High Court reasoned from the terms of ss 4, 7, 8, 13, 13A and 28 of Act 299 and the background facts as set out above that:

(a) the first respondent has a statutory duty to receive information pertaining to a child's birth;

(b) under s 28 of Act 299, the first respondent is duty-bound to maintain details or particulars in the register which are true and correct;

(c) the mother of an illegitimate child is not allowed to enter in the register any name as the father of the child without the consent of the father due to ramifications on paternity and inheritance issues;

(d) the presumption that the husband of a married woman is the father of a child does not apply as there is conclusive evidence that the appellant is the biological father of the child;

(e) there was evidence that the appellant has shown efforts to take care of the child in which case the first respondent was ordered to correct the mistake relating to the father of the child; and

A (f) the surname of the child may be changed to the appellant's surname as there is a request from him to do so and because he had access to the child.

B **[14]** The High Court further disagreed with the first respondent's submission that in the case of an illegitimate child, s 13 mandatorily requires the consent of the mother of the child before the name of the biological father may be included at the time of registration of the child's birth.

C **[15]** The Court of Appeal disagreed with the High Court, approaching the matter from two entirely different perspectives. First, that s 28 does not supersede s 13 of Act 299; second, that the decision of the High Court was 'in conflict' with 'public policy', 'culture of the people' and 'religious values'. 'Public policy' was however, not defined by the Court of Appeal.

D SUBMISSIONS

[16] In gist, the appellant maintained that from a reading of ss 7 and 13 of Act 299, the appellant as the father of the illegitimate child is not under a legal E duty to inform of the birth of the child. Instead, it is the second respondent, as the mother of the child who is under a legal duty to do so as she comes within the category of persons identified in s 7 who would be 'qualified to give information concerning a birth', even where the child is illegitimate. Section 7 provides such persons are the father or mother of the child; the occupier of the F house in which the child was to the knowledge of that occupier born; any person presents at the birth; or any person having charge of the child. The appellant does not come within any of the categories set out in s 7.

[17] However, when registering the birth of the illegitimate child, the G mother is not permitted under s 13 to name the father of the child unless the father acknowledges himself to be the father. In such an event, both the mother and father are required to put in a joint request for the father's particulars to be entered and the register has to be signed by both of them.

H **[18]** This did not happen. In the appellant's version of the events, the second respondent surreptitiously registered the birth of the child thus depriving him the opportunity of acknowledging himself as the father of the child and utilising the process under s 13.

I **[19]** Regardless, he has since been declared the biological father of the child. And, reading ss 4, 7, 8 and 28 of Act 299, the appellant submitted that the first respondent who is under a statutory duty to maintain a register of all births in Malaysia, where the prescribed particulars must be accurate, the first respondent is then duty bound to update the register and record the correct

particulars pertaining to the father of the child. A

[20] The respondents' respective submissions focused almost entirely on the interpretation and construction of s 13 of Act 299.

[21] Insofar as the first respondent is concerned, the submission runs along these lines. First, Act 299 was modelled after the Births and Deaths Registration Act 1953 of the United Kingdom. Under that Act of 1953 and English common law, it is said that a putative father has no rights over his illegitimate child; those rights belong solely to the natural mother — see *Teoh Hock Soon v Chan Peng Yee* [2012] MLJU 71. B C

[22] Next, the interpretation and operation of s 13 and to some extent, s 13A. According to learned SFC, these are specific provisions governing the registration of illegitimate children; in which case, these provisions override the general terms in s 28 and also s 7 with regard to the list of persons who are qualified to give information concerning a birth. By the terms of s 13, a 'natural' or 'biological' father of an illegitimate child (for the purposes of this appeal, the terms are used interchangeably) is precluded from giving information concerning the birth of the child, and the first respondent is correspondingly prohibited from entering his name in the register. The only exception is where there is a joint request of the mother and the person acknowledging himself to be the father of the illegitimate child. D E

[23] Learned SFC submitted that s 13 provides for two obligatory requirements before the putative father of the illegitimate child may have his details and surname recorded in the register. First, there must be a joint request from both the mother and the person acknowledging himself as the father of the illegitimate child. Second, both these persons must attend and sign the register at the time of registration. F G

[24] From this, learned SFC makes the submission that the biological mother of an illegitimate child has no duty to provide the name of the father to the first respondent at the time of registration of birth. Where the biological mother refuses to have the biological father's details inserted or included in the register, then his details cannot be so included. In this appeal, the second respondent's deliberate and intentional registration of the birth of the child on a 'single application' as opposed to a 'joint application', inserting only her particulars and offering none for the father of the child, is said to be an exercise of her rights under s 13. She cannot be compelled to make a joint application. H I

[25] Learned SFC added that there is actually no legal requirement or prerequisite under ss 13, 13A, 28 or any other provisions of Act 299 for either

of the respondents to inform the appellant of the registration of the birth of the child at the material time.

[26] This position remains regardless the DNA test result and the declaratory order granted by the High Court. In the first respondent's view, the High Court was erroneous to have taken the following extraneous and irrelevant factors into consideration:

(a) the conclusive findings of the DNA test confirming the appellant as the biological father of the child;

(b) the appellant's access to the child (under the Guardianship of Infants Act 1961 (Act 351) and the exercise of such rights of access;

(c) the fear of problems pertaining to distribution of estate or property to the child;

(d) the right of the child to obtain love and care from both the second respondent and the appellant;

(e) the failure of the second respondent in informing the appellant of the registration of birth of the child; and

(f) the child knows the appellant.

[27] We note that the learned SFC had also submitted that the appellant has 'evidence which he may use to show that he is the biological father without even the need to make such amendments to certify he is the natural father of the said child'. Further, it was suggested that it would be illegal for the court to instruct the first respondent to include the appellant's particulars in the birth certificate despite there being no such duty imposed under Act 229. In the words of learned SFC, 'the only way for such statutory duty to be imposed is for the said law itself to be amended'. The United Kingdom from whence we took our Act 299 is amongst the jurisdictions which have amended their existing Family Law Reform Act 1987 to deal, inter alia, with the registration of the natural father's name in the birth certificate where the child is illegitimate. Unfortunately, Malaysia has not amended Act 299 to deal with the situation as presented in this appeal; hence it was urged upon us to dismiss the appeal.

[28] Learned counsel for the second respondent made similar submissions; citing *Nabors Drilling (Labuan) Corp v Lembaga Perkhidmatan Kewangan Labuan* [2020] 12 MLJ 54 on the principle that the specific provisions of ss 13 and 13A must prevail over the general terms of s 28; that the absence of the two mandatory requirements of joint request and attendance to sign the register meant that the appellant's details could not be inserted in the register. Like the first respondent, the second respondent argued that the fact that the appellant has been declared the biological father of the child makes no difference in view

of the second respondent's rights under s 13, which rights she has refused to waive. In fact, she objects to the insertion or inclusion of the appellant's particulars.

[29] Finally, the second respondent contended that it was not in the child's best interest for the appellant's particulars to be inserted given that:

(a) the second respondent has full custody, care and control of the child;

(b) the second respondent has reconciled with her husband and the child now lives with them;

(c) the appellant has since had another child with another person; and

(d) there is no public advantage to having the appellant's particulars inserted, on the contrary it is against public interest to do so.

[30] It was also suggested that allowing the appeal would open up the 'floodgates' and encourage other fathers of illegitimate children to make similar applications even though there were no joint requests to start with, thus running afoul of the intentions of Parliament as reflected in ss 13 and 13A.

OUR DECISION

[31] We remind ourselves the intent of Act 299, that its sole object or purpose is the registration of births and deaths. This is evident from the long title of Act 299; describing it as an Act 'relating to the registration of births and deaths', period. Act 299 does not apply to the States of Sabah and Sarawak — see s 4. These States have their own Ordinances — see Registration of Births and Deaths Ordinance (Sabah Cap 123) and Registration of Births and Deaths Ordinance (Cap 10 (1958 Ed)) for Sarawak.

[32] Act 299 envisages registers to be maintained of all births and deaths in Peninsular Malaysia. In the case of births, different registers are in fact maintained for livebirths and stillbirths and this is evident from the terms of s 7:

> 7 Particulars of births to be registered
>
> (1) Subject to the provisions of this part, the birth of every child born in Malaysia shall be registered by the registrar in any registration area by entering in a register such particulars concerning the birth as may be prescribed; and different registers shall be used and different particulars may be prescribed for live-births and still-births respectively:
>
> Provided that, where a living child is found exposed and no information as to the place of birth is available, the birth shall be registered by the registrar for the registration area in which the child is found.

[33] This statutory role of maintaining such public records is further evident from the terms of s 5. According to s 5, at the end of each year, presumably the Gregorian calendar year, the registrar-general is required to compile a summary of births and deaths of the preceding year and 'a general report on the increase or decrease of the population and on any special causes appearing to affect such increase or decrease, so far as the same can be adduced from the registers'.

[34] Although the registers kept and maintained by the registrar-general are not open to public inspection, a search may be made and an abstract from the registers, obtained. Under s 31, any person may, upon payment of the prescribed fee, apply in the prescribed form, to have a search made in the indices or registers maintained by the registrar-general; presumably to use the data or information supplied for a proper use. Section 33(1) further provides that 'an entry or a certificate of birth ... shall be received without further or other proof as evidence of such facts and particulars relating to such birth ... as are or were at the time of the making of such entry required by law to be set forth in such entry or certificate'.

[35] In substance then, the registers are meant to form the source or act as both the depository and repository of raw data of the nation's population. David Wong Dak Wah CJSS made similar observations in *Jabatan Pendaftaran Negara & Ors v A Child & Ors (Majlis Agama Islam Negeri Johor, intervener)* [2020] 2 MLJ 277; [2020] 4 CLJ 731, FC, that 'the purpose of the scheme of the BDRA 1957 is not to establish conclusively the facts of parent's parentage, but merely as a repository for the information of the state'. Likewise, Nallini Pathmanathan FCJ in the same decision — see para 244. Though dissenting judgments, this observation on this aspect of Act 299, in our view, is correct as can be seen from our elaborations as set out above.

[36] On a different but equally important level, and here we make specific reference to the persons whose particulars of births are registered — the implications of the information in the registers have indeed, far-reaching ramifications. Under article 24(2) of the International Covenant on Civil and Political Rights ('ICCPR'), the birth of every child must be immediately registered. Although Malaysia has yet to ratify the ICCPR, its terms are no less significant as universal principles.

[37] The details of birth in the registers maintained by the registrar-general are abstracted in the form of certificates of births issued by the registrar-general (see s 32). These certificates are absolutely vital for personal identity, lineage, inheritance, citizenship, the pursuit of education and just about every facet of decent life and livelihood. These are essentials of life and livelihood. This was acknowledged by the Deputy Minister for Home Affairs when tabling the amendments to Act 299 on 18 April 1975:

> Sijil beranak adalah salah satu daripada dokumen-dokumen yang penting dalam kehidupan seseorang ... Dengan demikian, maka rekod-rekod berkaitan dengan kelahiran-kematian adalah sangat perlu dijaga dengan rapi untuk mengelakkan daripada berlakunya sebarang pemalsuan, salahgunaan dan sebagainya.

[38] Bearing in mind the significance of these registers and the importance of the information contained therein, we make two critical observations.

[39] First, it makes sense that every birth and death must be timeously registered or informed to the relevant registrar by the persons identified under the Act; such persons described as 'qualified informants' — see s 7(3). Initially, the period for registration of all births was within 14 days from the date of birth. This period has since been amended to 60 days. There are however, provisions for delayed and late registration — see ss 11 and 12.

[40] In our view, the presence of these provisions serves only to emphasize the importance of registration of every birth (and death). This is further underscored by the fact that registrars are mandatorily obliged to accept every registration — see s 7 which reads as follows:

> 7 Particulars of births to be registered
>
> (1) Subject to the provisions of this part, the birth of every child born in Malaysia shall be registered by the registrar in any registration area by entering in a register such particulars concerning the birth as may be prescribed; and different registers shall be used and different particulars may be prescribed for live-births and still-births respectively:
>
> Provided that, where a living child is found exposed and no information as to the place of birth is available, the birth shall be registered by the registrar for the registration area in which the child is found.

[41] In fact, it is an offence under s 34, for registrars to refuse registration save and except where there is reasonable cause for refusal or omission to register.

[42] The second observation is this. The details that are entered into the register are 'such particulars concerning the birth as may be prescribed'. For this purpose and pursuant to the rules-making powers under s 39 of Act 299, the Births and Deaths Registration Rules 2019 (PU (A) 54/2019), repealing and replacing the earlier Rules of 1958 and in effect since 1 March 2019, apply.

[43] It goes without saying that the particulars in the registers must be true and correct; whether on the part of the qualified informant or the registrar entering the particulars provided. This was observed by the majority in *Jabatan Pendaftaran Negara & Ors v Seorang Kanak-Kanak & Ors*. Although made in

A reference to a notation under s 13, that the 'notation is purely a true reflection of the record of the birth of the child', the observation is entirely apt having regard to the role of these registers. It would be frightening to consider a register which is fraught with inaccuracies or worse, false information so as to render any information reposed therein utterly unreliable and useless.

B

[44] However, we must add that for the relevant information entered into the registers to be true and correct, it must also be accurate, particularly at the material time the information is given.

C

[45] If any errors or omissions are subsequently 'discovered' in any register, these may be corrected by the registrar-general. Where the errors are clerical in nature, the correction is at the behest of and in the manner as directed by the registrar-general. In other cases of errors of fact or substance, the correction is D upon application. This is clear from the terms of s 27(1)–(3) which read as follows:

> 27 Correction of errors and alteration in register
>
> (1) No alteration in any register shall be made except as authorized by this Act.
>
> E (2) Any clerical error which may from time to time be discovered in any register may be corrected by the superintendent-registrar, in such manner as the registrar-general shall direct.
>
> (3) Any error of fact or substance in any register may be corrected by entry (without any alteration of the original entry) by the registrar-general upon
> F payment of the prescribed fee and upon production by the person requiring such error to be corrected of a statutory declaration setting forth the nature of the error and the true facts of the case, and made by two persons required by this Act to give information concerning the birth, still-birth or death with reference to which the error has been made, or in
> G default of such persons then by two incredible persons having knowledge to the satisfaction of the registrar-general of the truth of the case; and the registrar-general may if he is satisfied of the facts stated in the statutory declaration cause such entry to be certified and the day and the month and the year when such correction is made to be added thereto.

H

[46] Then, there is s 28 which imposes a positive duty on the superintendent-registrar and the registrar (they assist the registrar-general in the functions and duties under the Act) to 'procure by all means in their power the best and most accurate information respecting any birth, stillbirth or death I which may have occurred within their registration areas and to cause particulars of the same to be recorded (so far as is practicable) in the manner prescribed':

> 28 Duty of superintendent registrar to procure registration

(1) Notwithstanding any omission to report or to furnish information as to any birth, still-birth or death within the time required by the preceding provisions of this Act, it shall be the duty of the superintendent-registrar and the registrar to procure by all means in their power the best and most accurate information respecting any birth, still-birth or death which may have occurred within their registration areas and to cause particulars of the same to be recorded (so far as is practicable) in the manner prescribed.

(2) It shall be the duty of every police officer, penghulu and headman to obtain information of every birth, still-birth and death within his respective area and also information respecting the lawful father and the mother of every child born in his area and respecting the occupier of any house in his area in which any birth, still-birth or death may have taken place and to give notice thereof to the registrar.

(3) Any police officer, *penghulu* or headman who has in his possession any such information and wilfully neglects or omits to disclose the same to the registrar shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty ringgit.

[47] Clearly, the intent behind s 28 is to require the registrar-general and his officers to take proactive steps towards ensuring that all births (and deaths) are registered, and that only the 'best and most accurate information' are entered into the registers. The registrar-general even has a power to update the re-registration of legitimated persons whose parents have overlooked the re-registration of their births after the marriage of the parents concerned by requiring the parents to attend personally and give such information as are necessary for the re-registration (see s 17).

[48] A final point to note is that where there is a correction or alteration to the register, the original entries in the registers are always maintained. This is evident from ss 15(3) and 27(3), (4) and (5).

[49] In our view, all these duties coupled with the power to correct and alter any entry in the registers, whilst maintaining the original entries, serve only to ensure that the registers are current and reliable records. In this regard, the particulars entered in the registers must necessarily be true, accurate and correct. After all, these records serve to form evidence of any birth or death as the case may be (see s 33); and in the larger sense, the source and indices of the population of this country.

[50] In the case of illegitimate births, s 13 provides that whilst the registration of such births may still be by any of the qualified informants mentioned in s 7, the name of the father of the child may not be entered except at the joint request of the mother and the person acknowledging himself to be the father of the child. Even then, these two persons must attend the office of

A the registrar-general and sign the register together:

> 13 Provisions as to father of illegitimate child
>
> Notwithstanding anything in the foregoing provisions of this Act, in the case of an illegitimate child, no person shall as father of the child be required to give information concerning the birth of the child, and the registrar shall not enter in the register the name of any person as father of the child except at the joint request of the mother and the person acknowledging himself to be the father of the child, and that person shall in that case sign the register together with the mother.

[51] Section 13 prohibits the registrar-general from entering the name of the purported father of the illegitimate child except where there is a request for such entry from both parents and they have both signed their agreement for such entry — see Form JPN.LM01 as set out in the First Schedule to the Births and Deaths Registration Rules 2019. In such a case, s 13A provides that the surname of the person acknowledging himself to be the father of the illegitimate child may be entered as the surname of that child. Otherwise, the illegitimate child may take the surname of the mother where the mother is the informant and where she volunteers the information. This situation does not present in this appeal since the appellant is not pursuing this relief.

[52] In the present appeal, the registration of the birth of the child was in accordance with the terms of ss 7, 13 and 13A. At the material time of registration, there was no joint request and agreement from the appellant to have his name entered as the father of the child. Even if the appellant says he was agreeable had he been asked, it would still not meet the requirements of s 13 as we understand the second respondent was not agreeable to making a joint request. For the purposes in this appeal, the reasons for the lack of a joint request and agreement are really irrelevant. We find however that, given the circumstances in this appeal, the entry in the register, though rightly recorded as 'maklumat tidak diperolehi' no longer holds true.

[53] Following the DNA results and more particularly, the order of court declaring the appellant as the biological father of the child, it cannot be now said that the information pertaining to the father of the child is or remains, unavailable or 'tidak diperolehi'. The information is since known and made available through the order of court. Quite rightly and in keeping with the duties and obligations of maintaining a public record of births which is reliable and can be relied on, the registrar-general cannot refuse the new information. It would make no sense for the registrar-general to maintain a record or register where the information on the father of the child is now inaccurate or untrue. On the contrary, in the face of the declaratory order, the registrar-general would be failing in his statutory duties in not correcting the records in relation to the child's father.

[54] When approached with the latest information (as set out in the declaratory order of court), the registrar-general ought to have facilitated the correction or alteration as he is empowered to do so under s 27. Correcting the records in the instant case would by no means render the information when first recorded at the time of birth of the child as inaccurate. Neither can it be suggested to run contrary to the interests or rights of the second respondent as mother of the child as accorded under s 13. That right remains intact as under s 27(3), while 'any error of fact or substance in any register may be corrected by entry', this is 'without any alteration of the original entry'. Hence, the issue of interference with the mother's rights and the matter of whether she was under an obligation to provide the name or details of the father of the child, does not arise.

[55] The decision in *Sean O' Casey Patterson v Chan Hoong Poh & Ors* [2011] 4 MLJ 137; [2011] 3 CLJ 722 was cited to us in support of the proposition that the particulars in the register can and ought to be corrected to reflect the appellant as the biological father of the child. In that case, an illegitimate child was adopted by his mother's sister who had converted when she married a Muslim. The appellant, the natural father of the child as confirmed by tests, learnt of the adoption and also that another man's name was entered as the child's father. The appellant filed an application challenging the validity of the adoption and conversion of the child while at the same time requesting that he be declared the biological father of the child, and that the registrar-general rectifies the relevant registers to name him as the father of the child. The High Court allowed the appellant's declarations that he is the natural father of the child and that the register be appropriately rectified. The remaining orders were dismissed. On appeal, the decision of the High Court was affirmed. However, the Court of Appeal went further to set aside the declaration and the order to rectify.

[56] The decision of the Court of Appeal was affirmed by the Federal Court. However, the Federal Court remarked in the closing paragraph of judgment that 'we accept that the Court of Appeal had erred in revoking the second order of the High Court in respect of rectifying the birth certificate of J to reflect the plaintiff as the father of J. We set aside this part of the order of the Court of Appeal and reinstate the second order granted by the High Court'.

[57] We do not find the decision of particular relevance to this appeal given that the questions posed therein revolved around the rights of the natural father in relation to the adoption of his child under the Adoption Act 1952 and the Registration of Adoptions Act 1952, and the applicable principles. Act 299 was not discussed by the court; neither does it appear to have been raised by the parties.

[58] But, one fact stands out — that the Federal Court was compelled to correct the decision of the Court of Appeal despite dismissing the appeal; directing the registrar-general to correct the entries in the register on the identity of the appellant as the natural father speaks volumes. It confirms our view that the registrar-general's role in these matters of registration of births is facilitative, and that the records maintained must contain only true, correct and accurate particulars. To leave the record of another man as the father of the child in that appeal in the face of uncontroverted evidence would be to lend legitimacy to what was wholly false.

[59] Finally, we want to address the matter of change of law. The contention of the two respondents is that because our s 13 is in *pari materia* with s 10 of the Births and Deaths Registration Act 1953 (1953 Chapter 20) of the United Kingdom and has remained unchanged since its introduction in 1957, we should interpret s 13 following cases such as *Perring v Perring and Simpson* [1949] 2 All ER 334; and *Mayo v Mayo* [1949] P 172; [1948] 2 All ER 869; [1949] LJR 48; 92 Sol Jo 676. In both cases, the courts recognized that where the statute did not oblige the mother to provide the name or even acknowledge the identity of the natural father of the child, the courts cannot impose such a duty on the mother. The registrar too, cannot in such circumstances enter in the register the name of any person as the father unless and until there is a joint request from both the mother and person acknowledging himself as the father for his name to be so entered. The position is the same in Ireland — see *In the matter of s 60(8) of the Civil Registration Act 2004 and in the matter of MR and DR (minors suing by their father and next friend OR), OR and CR, Applicants v An tArd Chláraitheoir, Ireland and The Attorney General, Respondents and LL, Notice Party, and The Equality Authority and The Irish Human Rights Commission, Amici Curiae* [2014] IESC 60.

[60] Section 10 of the 1953 Act however, has been amended several times in this respect. First, by the Family Law Reform Act 1969 and the Children Act 1975 before finally, the Family Law Reform Act 1987; the last due to recommendations by the Law Commission, Working Paper No 74, *Family Law Illegitimacy* (13 March 1979) and its subsequent report, The Law Commission (LAW COM No 118) on *Family Law Illegitimacy*. These amendments, in essence, allowed the inclusion of the biological father's name without a specific request from him (a statutory declaration made by him and tendered by the mother was sufficient); or where there is an affiliation order naming the person as the putative father. The amendments also provided for the re-registration of the birth of an illegitimate child under the same conditions as registration.

[61] The learned SFC also cited to us the decision in *AFE v Registrar of Births, Deaths and Marriages* [2011] NSWADT 201 where despite the law

being amended, the name of the biological father could still not be included as it did not come within the permitted terms for inclusion. In that case, the applicant, born in 1980 but who had been given up for adoption by his natural mother, sought to have the name of his biological father added to his original birth certificate after establishing contact with both his biological parents. His original birth certificate, issued upon adoption, named his adoptive parents as his parents. His biological father was not aware of his application and the applicant indicated that he did not wish to raise this with him 'as he did not wish to jeopardise this newly established relationship'. His application was supported by the Catholic Care Adoption Services, through whom his adoption had been facilitated.

[62] Despite acknowledging that the applicant's intention to include the name of his biological father on his original birth certificate was because it 'forms an important part of his own identity', the application was rejected by the registrar on the ground that the requirements of s 18 of the Births, Deaths and Marriages Registration Act 1995 had not been met. Section 18 reads as follows:

> 18 Registration of parentage details
>
> The registrar must not include registrable information about the identity of a child's parent in the register unless:
>
> (a) both parents of the child make a joint application for the inclusion of the information; or
>
> (b) one parent of the child makes an application for the inclusion of the information and the other parent cannot join in the application because he or she is dead or cannot be found, or for some other reason; or
>
> (c) one parent to the child makes an application for the inclusion of the information and the registrar is satisfied that the other parent does not dispute the correctness of that information; or
>
> (d) a court orders the inclusion of the information in the register; or
>
> (e) a court makes a finding that a particular person is the parent of the child; or
>
> (f) the registrar is entitled under the law (including the law of another State or the Commonwealth) to make a presumption as to the identity of the child's parent; or
>
> (g) the regulations authorise the registrar to include the information.

[63] After examining the above provisions as well as the repealed Registration of Births, Deaths and Marriages Act 1973 which was applicable at the time of the applicant's birth, the Tribunal set up under the Administrative Decisions Tribunal Act 1997 upheld the registrar's rejection of the application. The Tribunal held that 'although the law has changed since that time ... the inclusion of the name of the parents of the child in the register is not automatic'; that the applicant could not avail himself of the exceptions, whether under the 1995 Act or the 1973 Act. Under the repealed law, the

exceptions were: (a) where a joint request to include the name of the father was made by the mother and the person who acknowledges himself to be the father; (b) at the sole request of the person who acknowledges himself to be the father; and (c) where 'a court of competent jurisdiction has, under the law in force in New South Wales, made or given an order or judgment the making of which is dependent on the court being satisfied that that person is, or which adjudges or declares that person to be, the father of the child'.

[64] We can appreciate the decisions above; but with respect, these decisions are of little assistance in view of the fact pattern in our instant appeal. As we have repeatedly reminded, the appellant is not challenging the accuracy of the information recorded as at the time of registration of the birth of the child. That process is governed primarily by the requirements in ss 7, 13 and 13A. Those provisions deal with matters at the time of registration of the birth; they do not deal with matters post-registration. Neither is the appellant approaching the registrar-general without any proof of his claim of paternity. There is a valid court order staring at everyone in their face. Surely orders of the court cannot operate in vain and be of no effect. Compliance of such orders in fact offers shelter and protection to those who effect its terms — see s 14 of the Courts of Judicature Act 1964 (Act 91).

[65] The object and scheme of Act 299 together with the relevant provisions, namely s 27 read with s 28 ought to have compelled the registrar-general to carry out his statutory duties of correction and updating of records. In executing that function, the protection afforded by ss 13 and 13A to the mother and the putative father of an illegitimate child is unaffected.

[66] What we have here in this appeal is a scenario where the appellant has requested the registrar-general to update the register following the undisputed DNA results and the order of the High Court declaring the appellant as the biological father of the child; that with this latest information, the record of the identity of the father of the child as 'maklumat tidak diperolehi' surely can no longer be maintained but must be updated by way of a correction or amendment.

[67] In our view, that request is fair and proper as the declaratory order of the court is valid and remains effective. With that declaratory order of court, the 'maklumat' or information on the identity of the father of the child is now undisputedly available; that the appellant is the biological father of the child. We further understand that the appellant has maintained regular access to the child as was first granted to him by the High Court under the Guardianship of Infants Act 1961 (Act 351). The child is fully aware that the appellant is his biological father.

[68] Given these circumstances, we are of the firm opinion that this new information ought to be reflected in the public record, that is the register, that the true status of the child be corrected to reflect accurate information as regards the biological father, as required by the scheme of Act 299. We cannot see how it may be argued that correcting the register to reflect the declaratory order of the court is not in the interest of the child. On the contrary, it is certainly in the best interest and welfare of the child; consonant with the principles under the Convention on the Rights of the Child, to which Malaysia has acceded and ratified to on 11 February 1995.

[69] On a final note, we state that we wholly appreciate and support the need to amend Act 299 to better accommodate and meet the demands of the 21st century, especially to cater for technical and scientific inroads in the field of paternity and genealogy. Other than the United Kingdom and Australia, several other jurisdictions too have made inroads on the matter of rights of fathers of illegitimate children to better accommodate concerns of their rights at the time of registration of births — see for instance s 17(2) of the Care of Children Act 2004 of New Zealand; ss 19 and 21 of the Children's Act 38 of 2005 (South Africa); and article 176 of the New Civil Code of the Philippines. The position in Malaysia on these rights at the time of registration of births are as reflected in ss 13 and 13A.

[70] However, in respect of the matter that presents in the question of law posed, we cannot be shackled by the law enacted in 1957, derived from a 1953 piece of legislation from the UK which itself has long amended its governing law. We should not read Act 299 so rigidly in the manner as suggested by the respondents, in a matter which has such deep social content, especially when we appreciate the object and scheme of the Act and understand its proper working. This case and its long history through several court proceedings should have been avoided and better solutions found by the keepers of the registers, as early as possible.

[71] The beginning of life, the arrival of a new-born should be celebrated with joy and a sense of well-being. The inclusion of the name of a person as the mother or father of a new-born child does not necessarily mean that such named mother or father is the legitimate or even biological parent of the child, given the advent of assisted or in vitro fertilization and surrogacy (distinguishing further between birth, natural and genetic parents) and without casting any moral judgment, the practice of cohabitation. Had it been properly appreciated at the outset, that the registration of births by the registrar-general is essentially administrative and facilitative, and not a judicial function (as commented in the Law Commission, Working Paper No 74), there would have been a prescience to obviate any if not all the obstacles that were presented in this appeal.

A CONCLUSION

[72] We thus answer the question of law posed in the affirmative. We thus allow the appeal and set aside the decision of the Court of Appeal. Further, we make the following order — that the first respondent 'Pendaftar Kelahiran dan Kematian, Jabatan Pendaftaran Malaysia, diperintahkan untuk meminda atau membetulkan butir-butir dalam daftar dengan memasukkan nama perayu sebagai bapa kanak-kanak yang dikenali sebagai KANAK-KANAK L, yang dilahirkan oleh responden kedua pada 16 Julai 2015 di Sunway Medical Centre, Subang Jaya, Selangor Darul Ehsan'. Lastly, we make no order as to costs.

Appeal allowed; COA's decision set aside with no order as to costs.

Reported by Dzulqarnain Ab Fatar